FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 27 1946
CHARLES ELMORE CROPLEY
CLERK

No. 53

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL DAVIS SHERIDAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	4
Specification of errors to be urged	7
Summary of argument	8
Argument:	
Introduction	11
Respondent with fraudulent intent caused a falsely made security to be transported in interstate commerce	17
A. The checks were falsely made or forged securities within the statute	17
B. Respondent caused the interstate transportation of the checks	19
C. Respondent had the fraudulent intent required by the statute when he caused the checks to be transported in interstate commerce	21
Conclusion	34

CITATIONS

Cases:	
Backun v. *United States*, 112 F. (2d) 635	20, 31
Barnett v. *Hunter*, 138 F. (2d) 448	18
Bradford v. *United States*, 129 F. (2d) 274, certiorari denied, 317 U. S. 683	20
Brooks v. *United States*, 267 U. S. 432	13
Chatwin v. *United States*, 326 U. S. 455	15
Clarke v. *Sanford*, 156 F. (2d) 115	22, 24
Corbett v. *United States*, 89 F. (2d) 124	20
Demolli v. *United States*, 144 Fed. 363	20
Dunlap v. *United States*, 70 F. (2d) 35, certiorari denied, 292 U. S. 653	20
Goucher v. *State*, 113 Neb. 352	18
Graham v. *United States*, 120 F. (2d) 543	20
Greenspahn v. *United States*, 298 Fed. 736	20
Hirabayashi v. *United States*, 320 U. S. 81	18
Huffman v. *United States*, 259 Fed. 35	19
Kann v. *United States*, 323 U. S. 88	6, 8, 17, 22, 23, 32, 33
Millette v. *United States*, 4 F. (2d) 635	20
Pines v. *United States*, 123 F. (2d) 825	30
Smith v. *United States*, 61 F. (2d) 681, certiorari denied, 288 U. S. 608	20

Cases—Continued

	Page
Tolle v. *Sanford*, 58 F. Supp. 695	22, 24
United States ex rel. Marcus v. *Hess*, 317 U. S. 537	21, 32
United States v. *Hopper*, 63 F. Supp. 612	22
United States v. *Kenofskey*, 243 U. S. 440	19, 20
United States v. *Masonite Corp.*, 316 U. S. 265	21, 27
United States v. *Patten*, 226 U. S. 525	21, 27
United States v. *Weisman*, 83 F. (2d) 470, certiorari denied, 299 U. S. 560	20
United States v. *Wood*, 58 F. Supp. 451	22
Weiss v. *United States*, 122 F. (2d) 675, certiorari denied, 314 U. S. 687	20

Statutes:

Act of March 2, 1895, 28 Stat. 963	13
Animal Industry Act, 23 Stat. 31, sec. 6 (21 U. S. C. 115)	13
Criminal Code, Sec. 215 (Mail Fraud Statute) (18 U. S. C. 338)	6, 24, 25
Federal Kidnaping Act, 47 Stat. 326 (18 U. S. C. 408a)	14
Fugitive Felon Act, 48 Stat. 782 (18 U. S. C. 408e)	15
National Motor Vehicle Theft Act, 41 Stat. 324 (18 U. S. C. 408)	12, 13, 14, 15, 19
National Stolen Property Act, as amended, 48 Stat. 794; 53 Stat. 1178 (18 U. S. C. 413–419)	12, 15, 19, 24, 25
Sec. 2	2, 8, 12, 17
Sec. 3	3, 5, 8, 9, 11, 19, 21, 26, 28, 30
Pure Food and Drug Act, 34 Stat. 768	13
Webb-Kenyon Act, 37 Stat. 699 (27 U. S. C. 122)	13
White Slave Traffic Act, 36 Stat. 825 (18 U. S. C. 397-404)	13
Michigan Penal Code, Sec. 249 (24 Mich. Statutes Annotated, Sec. 28446)	16

Miscellaneous:

Chamberlain, *Federal Criminal Statutes, 1934*, 20 A. B. A. Journal 501	14
Congressional Record, Vol. 84, pp. 9411–9412	12
Harvard Law Review, Vol. 48, p. 489	14
H. Rep. 422, 76th Cong., 1st sess.	12
Miller, *The Attorney General's Program for Crime Control*, 21 A. B. A. Journal 507	14
S. Rep. 674, 76th Cong., 1st sess.	12
Virginia Law Review, Vol. 21, p. 568	14

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 53

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL DAVIS SHERIDAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the circuit court of appeals (R. 21–25) is reported at 152 F. (2d) 57.

JURISDICTION

The judgment of the circuit court of appeals was entered November 19, 1945 (R. 21), and a petition for rehearing was denied January 28, 1946 (R. 26–29). The petition for a writ of certiorari was filed March 5, 1946, and granted May 13, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether a person who fraudulently cashes in one state a forged check drawn on a bank in another state, the check thereafter being transmitted to the drawee bank for payment, has, with "fraudulent intent," "caused" a falsely made or forged security to be transported in interstate commerce within the meaning of Section 3 of the National Stolen Property Act.

STATUTE INVOLVED

The National Stolen Property Act of May 22, 1934, 48 Stat. 794, 795, as amended by the Act of August 3, 1939, 53 Stat. 1178 (18 U. S. C. 413–419), provides in pertinent part as follows:

> SEC. 2. That when used in this Act—
>
> (a) The term "interstate or foreign commerce" shall mean transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.
>
> (b) The term "securities" shall include any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negoti-

able bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

* * * * *

SEC. 3. Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, *feloniously converted,* or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, *feloniously converted,* or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counter-*

feited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: *Provided, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an "obligation or other security of the United States" as defined in section 147 of the Criminal Code (U. S. C., title 18, sec. 261) or (2) an obligation, bond, certificate, security, Treasury note, bill, promise to pay, or bank note, issued by any "foreign government" as defined in the Act of June 15, 1917, title VIII, section 4 (U. S. C., title 18, sec. 288), or by a bank or corporation of any foreign country.*[1]

STATEMENT

After a trial by jury, the respondent was convicted in the United States District Court for the Eastern District of Michigan on each count of a three-count indictment charging violations of

[1] The parts in italics were added by the amendment of August 3, 1939, *supra*.

Section 3 of the National Stolen Property Act, as amended (R. 2–4; 6; *supra*, pp. 3–4).[2] He was sentenced to imprisonment for five years on each count, the sentences to run concurrently (R. 7–8). Each count of the indictment charged that the respondent, with fraudulent intent, caused a falsely made or forged check to be transported in interstate commerce (R. 2–4).

The evidence adduced by the Government[3] shows that the respondent negotiated three checks on July 19, 1943, on the basis of which he was indicted in the present case. On July 18, 1943, the respondent had registered at the Otsego Hotel in Jackson, Michigan. He checked out of the hotel the next day, giving the hotel clerk a check for $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts. The check was payable to "Cash" and was signed as maker by "P. H. D. Sheridan". It was endorsed "P. H. D. Sheridan, 230 Park Avenue, New York." (R. 17–18, 22; count 3.) The clerk deducted $3.50 for the hotel bill and gave the respondent $46.50 in cash (R. 18). The same day, July 19, 1943, the respondent bought some luggage at a store in Jackson. He gave the manager of the store a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girar-

[2] Respondent waived the right to the assistance of counsel at the trial (R. 1, 6, 7).

[3] Respondent did not offer any evidence (R. 20).

deau, Missouri. This check was payable to "P. H. D. Sheridan", and purported to be signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner" (R. 18; count 1). The manager deducted $36.00, the price of the luggage, and gave the respondent the balance of $26.50 (R. 18). On the same day the respondent went to the National Bank of Jackson, where he cashed another identically drawn check for $62.50 (R. 18–19; count 2).

The checks were forwarded from Jackson, Michigan, to the drawee banks in Massachusetts and Missouri, respectively. The banks returned them unpaid and marked "no account" (R. 18–19). Investigation by the Federal Bureau of Investigation established that there was no such agency as "U. S. E. F. C. 14A", and no such person as "A. J. Davis, Commissioner" listed with the United States Department of Commerce (R. 19).

Upon appeal to the Circuit Court of Appeals for the Sixth Circuit, the respondent's conviction was reversed (R. 21–25). It was the view of that court that the case was controlled by the decision of this Court in *Kann* v. *United States*, 323 U. S. 88, wherein a conviction under the mail fraud statute (section 215 of the Criminal Code; 18 U. S. C. 338)[4] was reversed, this Court hold-

[4] Section 215 provides in pertinent part that "whoever, having devised or intending to devise any scheme or artifice to defraud, * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be

ing that the participants in the fraudulent scheme having obtained the fruits of their fraud when they cashed certain checks at their banks, the subsequent mailing of the checks by the banks, which were holders in due course, to the drawees were not mailings for the purpose of executing the fraudulent scheme. The court below held, in effect, that as under the mail fraud statute the use of the mails must be in furtherance of the fraudulent scheme, so under the particular amendatory provision of Section 3 of the National Stolen Property Act, the use of the means of interstate commerce must be for the purpose of furthering the fraud, and that since the respondent's fraudulent scheme had been fully consummated when he cashed the checks, it could not be said that he caused their subsequent interstate transportation in furtherance of his fraudulent scheme.

SPECIFICATIONS OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that the cashing of a forged check drawn on an out-of-state bank to which it is forwarded for payment does not constitute a violation of the National Stolen Property Act.

2. In reversing the judgment of conviction.

---

placed, any letter, * * * in any post office, * * * of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, * * * shall be fined not more than $1,000, or imprisoned not more than five years, or both."

SUMMARY OF ARGUMENT

The National Stolen Property Act is a part of a body of legislation designed to complement state criminal law enforcement by excluding from interstate commerce traffic which has an illegal character under state law. The mail fraud statute is designed to prevent the mails from being used in the execution of fraudulent schemes, without regard to the character of the matter placed in the mails. The two statutes are so dissimilar in terms and purpose as to make the doctrine of the *Kann* case inapplicable.

The checks involved are within the statute; their interstate transportation was caused by the respondent; and under the proper construction of the statute he had the requisite fraudulent intent.

A. The checks negotiated by the respondent were drawn in the name of a fictitious person. They were, therefore, falsely made securities within Section 3 of the National Stolen Property Act, the term security being defined by Section 2 of that Act to include checks.

B. The word "cause" is used in Section 3 of the National Stolen Property Act in its ordinary sense; i. e., to bring about. The respondent by negotiating the falsely made checks which were drawn on an out-of-state bank, caused those checks to be transported in interstate commerce. The sending of the checks to the out-of-state bank on which they were drawn was the necessary and

direct result of the respondent's negotiation of them and under these circumstances he cannot be heard to say the contrary.

C. The respondent had the fraudulent intent required by the statute.

(1) Read literally, the amendatory language of Section 3 of the National Stolen Property Act requires no more than that the offender have a fraudulent intent at the time he does the act which causes the interstate transportation of a spurious security. To so read the amendment makes it comport with the familiar rule of criminal law that a person who intentionally does an act is conclusively presumed to intend the necessary and direct consequences of his act.

(2) Assuming *arguendo,* that the spurious securities provision requires that the "fraudulent intent" specified therein exist when the securities are transported, and that it must be directed against the particular person with whom the offender deals, the respondent's fraudulent intent against those with whom he dealt had not terminated when the interstate transportation of the checks took place.

The respondent's fraudulent intent obviously encompassed more than the mere intent to receive the proceeds of the checks. He intended, in addition, to retain the proceeds permanently, and to aid him in effectuating that vital part of his plan, he used checks drawn on a bank a long dis-

tance away. When he cashed the checks he knew and intended that the time which would necessarily elapse while the checks would be in the course of transmission for payment, would aid him in his plan to escape and thus materially assist him in his effort to retain the proceeds of the checks permanently. Hence, it is difficult to perceive how the mere receipt of the proceeds of the checks could have exhausted the respondent's fraudulent intent.

(3) The statute excludes from interstate commerce securities that have acquired an illegal character because of their involvement in violations of state laws. The purpose of placing the term "fraudulent intent" therein must have been to exclude from interstate commerce all securities of that character. With this purpose in mind, the Congress, no doubt, had in contemplation the rule that a person who negotiates a spurious security has a general intention, sufficient under state law, to defraud any innocent member of the public who takes it for value. In the absence of language in the statute showing a contrary intention, it is reasonable to assume that the Congress used the term "fraudulent intent" with that rule in mind, and that it did not, therefore, intend that one who causes the interstate transportation of a spurious security should be permitted to immunize himself from the punishment provided in the Act by showing that prior

to the transportation he had received the proceeds of the security from a particular person.

ARGUMENT

Introduction

Section 3 of the National Stolen Property Act as it was originally enacted in 1934 (*supra,* p. 3) made it an offense for any person to transport or cause to be transported in interstate or foreign commerce any property (including securities) of the value of $5,000 or more which had theretofore been stolen, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, etc. In 1939 the Congress amended Section 3 of the Act (*supra,* pp. 3–4), by adding thereto, *inter alia,* a provision which enlarged the scope of the Act to make it an offense for anyone "with unlawful or fraudulent intent [to] transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited."[5] This case arises under that amendment.

[5] The amendment excepts from its operation securities of the United States Government and certain foreign securities. With the same exception, it was also made an offense to transport or cause to be transported in interstate or foreign commerce various specified implements used in forging or counterfeiting securities. In addition, the amendment provided that it should be an offense to transport or cause to be transported in interstate or foreign commerce property of the

The immediate legislative history of the amendment sheds little light on its intended reach. It was suggested by the Attorney General, approved by the judiciary committees of both houses of Congress, and enacted without extended discussion. The only statements in the committee reports or in the limited floor discussion of the amendment were to the effect that it was intended to cover the counterfeiting of securities. See H. Rep. 422 and S. Rep. 674, 76th Cong., 1st sess.; see also 84 Cong. Rec. 9411–9412. However, while this objective may have motivated the legislation, it is obvious from the express terms of the amendment, which include not only "counterfeited", but also "falsely made, forged", and "altered" securities, that the amendment was intended to and does cover more than the transportation of counterfeited securities.[6]

The original Act of 1934 was modeled on the provisions of the National Motor Vehicle Theft Act of October 29, 1919, c. 89, 41 Stat. 324 (18 U. S. C. 408), which made it an offense to transport or cause to be transported in interstate or foreign commerce a stolen motor vehicle with knowledge that it had been stolen.[7] The latter

---

value of $5,000 or more which had been feloniously converted, knowing the same to have been so converted.

[6] The term "securities" is defined by Section 2 of the Act (*supra*, p. 2) to include any "check."

[7] The National Stolen Property Act is entitled "An Act to extend the provisions of the National Motor Vehicle Theft Act to other stolen property." See 48 Stat. 794.

act was part of a body of federal legislation extending over a period of half a century, in which the Congress, exercising its power to regulate commerce, had forbidden, under pain of punishment, the use of interstate commerce as an agency to promote crime or immorality in any of the states, or to spread other evils, such as disease or adulterated foods, to the people of other states from the state of origin. See *Brooks* v. *United States*, 267 U. S. 432.[8] The National Motor Vehicle Theft Act marked the beginning of that phase of the congressional program induced by the alarming facility with which a stolen automobile could be removed from the jurisdiction of the police authorities in which it had been stolen, by merely driving it across a state line. *Brooks* v. *United States, supra*, at pp. 438–439. The increasingly common use of the automobile led to

[8] The *Brooks* case held that the National Motor Vehicle Theft Act was a valid exercise of the commerce power. The opinion refers to decisions of this Court upholding the following earlier statutes as within the commerce power: The Animal Industry Act of May 29, 1884, c. 60, 23 Stat. 31, sec. 6 (21 U. S. C. 115), excluding diseased cattle from interstate commerce; the Act of March 2, 1895, c. 191, 28 Stat. 963, for the suppression of lottery traffic; the Pure Food and Drug Act of June 30, 1906, c. 3915, 34 Stat. 768, excluding adulterated articles from interstate commerce; the White Slave Traffic Act of June 25, 1910, c. 395, 36 Stat. 825 (18 U. S. C. 397–404), prohibiting the interstate transportation of women for immoral purposes; and the Webb-Kenyon Act of March 1, 1913, c. 90, 37 Stat. 699 (27 U. S. C. 122), forbidding the transportation into a State of liquor intended for personal use contrary to state law.

its frequent employment by those who had violated state criminal laws for the purpose of crossing state lines in order to evade detection and apprehension. It is well known that during the 1920's and 1930's bank robbers, highwaymen, and other criminals found it easy after the commission of an offense in one state to escape from the jurisdiction of the state police where the offense had been committed through the simple expedient of traveling by automobile to another state, taking with them their illegally acquired gains and their firearms. Kidnapers likewise found it a simple matter to escape from the state police by similarly transporting their victims across state lines. In these circumstances, the several states were unable to enforce their criminal laws effectively, and in order to aid them it became necessary for the federal government to outlaw this traffic in interstate commerce. The Congress, therefore, as in the case of the National Motor Vehicle Theft Act, enacted a series of statutes founded on its power to regulate commerce designed to exclude such traffic from the channels of interstate commerce. See Chamberlain, *Federal Criminal Statutes, 1934*, 20 A. B. A. Journal 501 (1934); Miller, *The Attorney General's Program for Crime Control*, 21 *id.* 507 (1935); see also 21 Va. L. Rev. 568 (1935); and 48 Harv. L. Rev. 489 (1935). Among these statutes were the Federal Kidnaping Act of June 22,

1932, c. 271, 47 Stat. 326 (18 U. S. C. 408a), making it an offense to transport a kidnaped person across state lines;[9] the Fugitive Felon Act of May 18, 1934, c. 302, 48 Stat. 782 (18 U. S. C. 408e), making it unlawful for any person to travel in interstate or foreign commerce with intent to avoid prosecution for specified crimes of violence under the laws of the place from which he fled; and the National Stolen Property Act of 1934. It is plain that the purpose of these statutes was to complement state law enforcement through the exclusion from interstate commerce of traffic which had acquired the taint of illegality because connected with a violation of some state criminal law. The gist of the offense under the National Stolen Property Act of 1934, as in the case of its precursor, the National Motor Vehicle Theft Act, is the transportation of an article which under local law has already been vested with an unlawful character.

The 1939 amendment to the National Stolen Property Act extended the provisions of that Act to include falsely made, forged, altered, and counterfeited securities, other than certain foreign securities or those of the federal government (see *supra*, pp. 3–4). Obviously, such securities, unlike those which are genuine, have no

[9] In *Chatwin* v. *United States*, 326 U. S. 455, 462–463, reference is made to the fact that the Federal Kidnaping Act was enacted to assist the States in stamping out kidnapings.

value as such. They have no legitimate use in normal commercial intercourse, and they can be disposed of for their ostensible value by one having knowledge of their falsity only through the fraudulent representation that they are genuine. Thus, their disposition under these circumstances is universally forbidden by state law.[10] And, it is equally clear that persons who make false securities may distribute them for utterance in states outside the state of manufacture, thereby making it difficult, if not impossible, for the authorities of the states in which they are uttered to detect their source and to apprehend their makers. It follows that the spurious securities excluded from interstate commerce by the 1939 amendment, like the stolen property specified in the original Act, are those which have been tainted with illegality through their involvement in a violation of state law. Thus, the underlying purpose of the Congress in passing the 1939 amendment was no different from its purpose in enacting the original Act. In both cases the purpose was to complement state law enforcement by prohibiting the transportation in interstate commerce of property which has acquired an illegal character. In contradistinction, the purpose of the mail

[10] *E. g.*, in Michigan, where the checks here involved were cashed, it is a felony to utter a falsely made bill of exchange (check), knowing the same to be falsely made, with intent to defraud. Penal Code, section 249, 24 Mich. Stat. Anno. § 28.446.

fraud statute, under which *Kann* v. *United States*, 323 U. S. 88, arose, is to prohibit the use of the United States mail service, an enterprise wholly owned and operated by the federal government, as an instrumentality for the perpetration of frauds; and under that statute the writings or articles placed in the mails to further the fraud need have in and of themselves no illegal status or existence. Because of these differences, it is plain that the reasoning of the *Kann* case, upon which the court below relied, has no proper place in a construction of the 1939 amendment (see *infra*, pp. 24–26, 32–33).

Respondent with fraudulent intent caused a falsely made security to be transported in interstate commerce

The acts on account of which the respondent was prosecuted in this case consisted of his cashing three checks in Jackson, Michigan, each of which was drawn on a bank in another state (see *supra*, pp. 5–6). We here show that these acts, coupled with the subsequent interstate transportation of the checks, constituted violations of the National Stolen Property Act, as amended.

A. *The checks were falsely made or forged securities within the statute.*—The checks cashed by the respondent are "securities" within the meaning of that term as used in the National Stolen Property Act. Section 2 (b) of that Act (*supra*, p. 2) defines the term "securities" and

expressly includes checks in its definition. See *Barnett* v. *Hunter*, 138 F. (2d) 448, 449 (C. C. A. 10).

The checks involved in counts one and two of the indictment (*supra*, pp. 5–6) were "falsely made" or "forged" securities.[11] Each of them was made in the name of a fictitious person payable to the order of respondent, and there was no account in the name of the maker in the bank on which they were drawn. In negotiating them the respondent represented that they were genuine (R. 18–19).[12] The natural inference under these circumstances is that it was the respondent who made the checks and that he made them with fraudulent intent. It is beyond argument, therefore, that the checks were under general law falsely made or forged. Hence, they were falsely made or forged securities under the National Stolen Property Act, as amended.

---

[11] No error is urged as to the reversal in respect of count three of the indictment. That count (*supra*, p. 5) involved a check signed by the respondent in his own name as maker. It is not clear that such a check is falsely made or forged within the general law. See *Goucher* v. *State*, 113 Neb. 352, 354–355 (1925). It is unnecessary, however, to sustain the judgment of conviction on count three, since the sentence on that count was made to run concurrently with the sentences on the other counts (*supra*, p. 5). See *Hirabayashi* v. *United States*, 320 U. S. 81, 85.

[12] In one case the respondent stated that he had received the check "in the course of his business." In the other case, he had an officer of the bank identify him to the paying teller.

B. *Respondent caused the interstate transportation of the checks.*—There can be no serious contention on this record as to the sufficiency of the evidence to support the jury's finding that the checks which the respondent cashed in Jackson, Michigan, were thereafter transported in interstate commerce. A witness, well qualified in banking matters, testified that the stamped endorsements on the checks involved in counts one and two of the indictment showed that the banks in Jackson, Michigan, in which they had been deposited had forwarded them to the drawee bank in Cape Girardeau, Missouri, and that the latter had returned them unpaid marked "no account." (R. 19.)

The statute punishes not only the actual transporter but also anyone who has "caused" the transportation (*supra*, p. 3). The word "cause" is a word of very broad import, and in its well-known sense it means "bringing about". In the absence of any contrary legislative intent the word "cause" as used in the National Stolen Property Act must be given its commonly accepted meaning. Cf. *United States* v. *Kenofskey*, 243 U. S. 440, 443; *Huffman* v. *United States*, 259 Fed. 35, 38 (C. C. A. 8). It has been held under both the National Stolen Property Act and the National Motor Vehicle Theft Act[13]

[13] As our earlier discussion shows (*supra*, pp. 12–15), the National Motor Vehicle Theft Act is clearly *in pari materia* with the National Stolen Property Act.

that a person may cause an article to be transported in interstate commerce, even though he does not specifically direct such transportation. If he intentionally sets in motion a train of circumstances which have as their natural and probable consequence the interstate transportation, he will be said to have caused it. See *Backun* v. *United States,* 112 F. (2d) 635, 636–637 (C. C. A. 4); *Millette* v. *United States,* 4 F. (2d) 635 (C. C. A. 7).[14] This is no more than the application of the familiar doctrine that a person is presumed to intend the natural and probable consequence of his act. See *Bradford* v. *United States,* 129 F. (2d) 274, 277 (C. C. A. 5) certiorari denied, 317 U. S. 683; *Weiss* v. *United States,* 122 F. (2d) 675, 681 (C. C. A. 5), certiorari denied, 314 U. S. 687; *Dunlap* v. *United States,* 70 F. (2d) 35, 37 (C. C. A. 7), certiorari denied, 292 U. S. 653; *Greenspahn* v. *United States,* 298 Fed. 736, 738 (C. C. A. 7). If a person does an act which necessarily and directly causes a given result he will not be permitted

[14] There are also numerous decisions under the mail fraud statute wherein the word "cause" appearing in that statute has been given a like scope. *United States* v. *Kenofskey, supra; Graham* v. *United States,* 120 F. (2d) 543, 546 (C. C. A. 10); *United States* v. *Weisman,* 83 F. (2d) 470, 474 (C. C. A. 2), certiorari denied, 299 U. S. 560; *Corbett* v. *United States,* 89 F. (2d) 124 (C. C. A. 8); *Smith* v. *United States,* 61 F. (2d) 681, 684 (C. C. A. 5), certiorari denied, 288 U. S. 608; see also *Demolli* v. *United States,* 144 Fed. 363, 365–366 (C. C. A. 8).

to show that he intended the contrary. *United States* v. *Patten*, 226 U. S. 525, 543; *United States* v. *Masonite Corp.*, 316 U. S. 265, 275. Under these doctrines, it is clear, we submit, that respondent "caused" the interstate transportation of the checks. It is certain that he cashed them. And, he must have known that the banks in which the checks would be deposited, would necessarily have to forward them for payment, as they did, to the out-of-state bank on which they were drawn. Cf. *United States ex. rel. Marcus* v. *Hess*, 317 U. S. 537, 542–544.

Our discussion of causation has been necessarily limited to whether the respondent actually caused the checks to be transported in interstate commerce. Since the statute requires that whoever causes the securities to be transported must do so with fraudulent intent, we now pass to that phase of the argument.

C. *Respondent had the fraudulent intent required by the statute when he caused the checks to be transported in interstate commerce.*—The pertinent portion of Section 3 of the statute here involved provides that "whoever with * * * fraudulent intent shall * * * cause to be transported in interstate * * * commerce any falsely made [or] forged * * * securities, knowing the same to have been falsely made, [or] forged, * * * shall be punished" as therein provided (*supra*, pp. 3–4). The court below

concluded that the respondent's acts did not constitute offenses under the statute because his "fraudulent scheme" had been fully consummated before there was any interstate transportation (R. 24–25). In reaching this conclusion the court proceeded upon the theory that the reasoning of this Court in *Kann* v. *United States*, 323 U. S. 88, a case arising under the mail fraud statute (see fn. 4, p. 6, *supra*) was controlling.[15]

In the *Kann* case the defendants, who were officers or executives of a corporation, were charged with having caused the mailing of two checks in execution of a scheme to defraud the corporation of its profits. The checks represented the profits diverted to the defendants. One of the checks, payable to five of the defendants, was cashed by them at a bank which thereafter mailed it to the bank on which it was drawn; the other check, payable to one of the defendants, was deposited by him in a bank, which also mailed it to the bank on which it was drawn. This Court concluded that the mailings were not for the purpose of executing the scheme to defraud. It stated that by cashing the check in the one case, and by depositing it in

[15] To the same effect, see *United States* v. *Hopper*, 63 F. Supp. 612 (D. Ore.), and *United States* v. *Wood*, 58 F. Supp. 451 (N. D. W. Va.). Other cases, however, have held that the reasoning of the *Kann* case does not apply in construing the 1939 amendment to Section 3 of the National Stolen Property Act. See *Clarke* v. *Sanford*, 156 F. (2d) 115 (C. C. A. 5), decided May 16, 1946, and *Tolle* v. *Sanford*, 58 F. Supp. 695 (N. D. Ga.).

the other case, the defendants had "received the moneys it was intended they should receive. * * * The banks which cashed or credited the checks, being holders in due course, were entitled to collect from the drawee bank in each case and the drawer had no defense to payment. The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably. It was immaterial to them, or to any consummation of the scheme, how the bank which paid or credited the check would collect from the drawee bank." (323 U. S. at p. 94.) The court below said that it was "no more logical to say that [respondent] caused the checks to be transported in interstate commerce than it would have been to say that the conspiring defendants in the *Kann* case caused the checks to be mailed for the purpose of executing their fraudulent scheme; inasmuch as the victims cashed the checks falsely made by [respondent] and became holders in due course, just as did the banks which cashed or credited the checks in the Kann case." (R. 25.)

The Circuit Court of Appeals for the Fifth Circuit and the District Court for the Northern District of Georgia have held that the doctrine of the *Kann* case has no application to a prosecution under the National Stolen Property Act involving the cashing of forged checks drawn on out-of-state banks, and that it is immaterial that the de-

fendant had obtained the money on the checks before the transportation took place. *Clarke* v. *Sanford*, 156 F. (2d) 115, pending on petition for a writ of certiorari, No. 397 at the present Term; *Tolle* v. *Sanford*, 58 F. Supp. 695. In those cases both courts pointed out that there is a fundamental distinction between the mail fraud statute and the National Stolen Property Act, in that the gist of the former is not the mere mailing of a letter but its mailing in furtherance of a fraudulent scheme, while the gist of the applicable provision of the latter Act is the mere transportation or causing to be transported in interstate commerce of falsely made, forged, altered, or counterfeited securities. On the basis of this difference both courts in the cases before them found it improper to follow the doctrine of the *Kann* case in construing the National Stolen Property Act, but held instead that, in view of the gist of the latter Act, it was immaterial that the offenders had received the money for the spurious securities prior to the time they were actually transported in interstate commerce, the statute not requiring the transportation to be in execution of the fraud.[16]

We submit that the National Stolen Property Act here involved and the mail fraud statute considered by this Court in the *Kann* case are so fundamentally dissimilar both in design and

[16] In the *Clarke* case, the Fifth Circuit refused to follow the instant decision; the court said "*Sheridan's* case was wrongly decided."

in purpose as to preclude their being construed in a manner which requires the limiting effects of a unique provision in one to be made common to both. The dissimilarity between the mail fraud statute and the National Stolen Property Act is strikingly plain. The mail fraud statute is designed to prevent a federally owned and operated institution; i. e., the United States mail service, from being made an active force in the perpetration of frauds upon the public. It precludes the use of the mails only when that use tends to effect the execution of a scheme to defraud. Hence, it is the advancement of the fraudulent scheme that activates the statute, and not the illegal character of the matter which is placed in the mails. The National Stolen Property Act, on the other hand, is designed to complement state criminal law enforcement by closing the channels of interstate commerce generally to articles which have acquired an illegal character under the criminal laws of the states because of their involvement in violations of those laws. Its vital force is brought into action, not by the use of interstate commerce in execution of a fraudulent scheme, but by the interstate transportation of articles of the character specified, coupled only with guilty knowledge, and in some instances fraudulent intent, on the part of the offender.

Since there are material distinctions between the mail fraud statute and the National Stolen

Property Act, the latter Act should be construed in the light of its own language and objective for the purpose of determining whether one who entertains a fraudulent intent at the time he does an act which necessarily and directly results in the interstate transportation of a specified spurious security, shall be permitted to say that he had no fraudulent intent when such transportation occurred, because prior to the transportation he had received the face value of the security. There are several possible constructions which may be reasonably placed on the spurious securities provision of Section 3 of the National Stolen Property Act. Under none of them will the provision permit an accused to escape punishment by showing that he had received the fruits of his fraud prior to the actual transportation of the security in interstate commerce.

(1) The language of Section 3 of the National Stolen Property Act, as amended to include spurious securities, read literally, requires only that an offender have a fraudulent intent at the time he "causes" the transportation of a spurious security in interstate commerce; i. e., when he does the act which brings about the interstate transportation of the security. Under a literal reading of the section, a person who, with fraudulent intent, does an act the necessary and direct result of which is the interstate transportation of a spurious security, has violated the section. So

read, the effect of the section is similar to that of the familiar rule of criminal law that a person who intentionally does an act will be conclusively presumed to intend the necessary and direct consequence of his act. See *United States* v. *Patten*, 226 U. S. 525, 543; *United States* v. *Masonite Corp.*, 316 U. S. 265, 275.

(2) Assuming *arguendo*, that the amendment requires that the fraudulent intent exist at the time of the interstate transportation, and that it must be directed against the particular person with whom the offender has dealt, it is clear that in the case at bar the respondent had the requisite fraudulent intent when the checks were actually transported in interstate commerce. There is no language in the amendment which requires that the interstate transportation shall be in execution of the fraud which the offender intends to perpetrate. At the most, the amendment requires only that the interstate transportation and the fraudulent intent shall co-exist, and it is plain that the respondent still entertained a fraudulent intent against those with whom he dealt when the checks were transported to the out-of-state bank. True, he had received the money and merchandise from them in exchange for the falsely made checks before the checks entered the channels of interstate commerce, but the payments and deliveries were subject to revocation, since he received no title to the money or property.

He could not reasonably consider the transactions as closed, for he knew that what he had obtained would be subject to recapture by the rightful owners as soon as the fraud would be discovered, and he knew and intended that the delay caused by sending the checks to the distant bank would preclude the rightful owners from seeking immediate recapture, thus giving him an opportunity to make plans for retaining indefinitely the money and merchandise. Since his permanent retention of the money and merchandise was a vital part of his fraudulent plan, it is difficult to perceive how his fraudulent intent could have been terminated prior to the occurrence of the interstate transportation, the necessary time for which he counted upon to aid him in preventing the true owners from making him disgorge.

(3) The probable reasons underlying the inclusion in the amendment of the fraudulent intent requirement clearly indicate that the measure of the fraudulent intent which the Congress envisaged is such that it is not limited in its direction to the immediate person from whom the offender collects, and is not, therefore, consummated when the offender receives payment for a spurious security prior to its interstate transportation.

In amending Section 3 of the Act to make it include spurious securities, the Congress was again complementing state law enforcement. It was,

therefore, necessary to devise language broadly descriptive of securities which are of an illegal character under state law. The Congress was aware, no doubt, that a requirement merely of knowledge by an offender of the false character of a security might not comprehend the element of fraudulent intent which under state law is required in order to give to the security a contraband character in the offender's hands. The purpose of the Congress in placing in the amendment the requirement that an offender have a fraudulent intent must have been, therefore, to make it certain that all of the new types of property which it was incorporating into the statute should, before their interstate transportation would be punishable, have an illegal character similar to that of the stolen property excluded by the original Act. Bearing in mind this congressional purpose for placing in the amendment the term "fraudulent intent" and the fact that the amendment does not expressly provide that the interstate transportation must be in furtherance of a scheme to defraud a particular person, we think it is reasonable to assume that the Congress had in contemplation the general fraudulent intent which is sufficient under state law; that is, a person who makes and negotiates a spurious security need have only a general intention to defraud any innocent member of the public who may take it for value. We believe therefore that this

was the breadth of the "fraudulent intent" which the Congress had in mind when it included that term in the amendment. See *Pines* v. *United States*, 123 F. (2d) 825, 827 (C. C. A. 8).

With this broad connotation of the term "fraudulent intent" in mind, the Congress would scarcely have placed that term in the amendment unattended by clarifying language had it intended to use the term in a narrower sense. In other words, the Congress would not in all reasonable probability, have left its purpose unexpressed had it intended to use the term as the basis of a highly restrictive rule that the interstate transportation of spurious securities should be within the operation of the statute only when the transportation is coupled with a fraudulent intent on the part of the offender to practice a specific deceit on a particular person, or when the transportation would be a step in the execution of a particular fraudulent scheme. In the absence of express language in the statute evidencing an intention on the part of the Congress to use the term in the narrower sense, it would be improper to imply that it did so. The stolen property provisions of Section 3 do not permit a person who, by the sale of stolen property knowing that it is to be taken to another state, and thus causes it to be transported interstate, to use his ill-gotten gains as a shield to evade punishment for his

criminal responsibility for the transportation. See *Backun* v. *United States*, 112 F. (2d) 635, 637 (C. C. A. 4). Why then, should the Congress have intended to extend to an offender under the spurious securities provision of the same section that unusual privilege? No cogent reason is apparent why the Congress should have granted the privilege to one class of offenders under the section while withholding it from others, especially since the spurious securities which the Congress was including in the section were as objectionable in character as the stolen property originally included.

A simple illustration will dispel any doubt that the Congress intended to use the term "fraudulent intent" in a sense so narrow and particular as to permit an offender to escape punishment by showing that he has received the fruits of his fraud. Let us suppose that A makes a spurious security in Michigan which he sells for less than its face value to B in New York with the intention that B, who has knowledge of its false character, will utter it in the latter state at its face value. B sends the money for the security to A and A then hires C to transport the security to B in New York. In such case A has reaped the full fruits of his fraud prior to the interstate transportation, but it is patent that the receipt of the money from B could not affect the general

fraudulent intent entertained by him when he made the false security, for he never intended to defraud B. However, it is clear that A when he made the security had the fraudulent intent requisite to complete the state crime involved in the making of it and to give to the security a contraband character in his hands when he caused its interstate movement. It is difficult to comprehend that the Congress did not intend the amendment to cover a case such as that, but the construction applied to that provision by the court below in the case at bar would clearly exclude it from the operation of the statute, since A has received all that he ever expects to receive for the security prior to the interstate transportation. We submit that the Congress did not intend that result, and that it did not, *a priori*, intend that the receipt by an offender of the fruits of his fraud in connection with a spurious security, should immunize him from prosecution under the statute. Cf. *U. S. ex rel. Marcus* v. *Hess*, 317 U. S. 537, 542–543.

Under the circumstances the court below was in error in reversing the conviction of the respondent on the basis of this Court's decision in *Kann v. United States, supra.* In that case the statute considered by this Court required that the

use of the mails be in execution of the fraudulent scheme, and the checks involved were valid. When the banks took the checks they became holders in due course, and the payments made by them on the checks were irrevocable. The checks were not the basis of the fraud, and the perpetrators of the fraud might have secured payment in another form, so that the mailing of the checks was merely incidental to the fraud and not in execution of it. Here, the statute does not require that the transportation be in execution of the fraud, but at the most that it co-exist with the fraudulent intent of the offender, and the checks were fictitious and invalid. The court below assumed that those who took the checks from the respondent were holders in due course just as were the banks involved in the *Kann* case (R. 25). It is obvious, however, that the respondent's victims did not become holders in due course in the sense that they could enforce payment against the drawee bank. Furthermore, the payments made to the respondent were not irrevocable as were those involved in the *Kann* case. Thus, the reasoning enunciated by this Court in construing the mail fraud statute in the *Kann* case is plainly inapplicable to the statute here under consideration.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
LEON ULMAN,
JOHN R. BENNEY,
ROBERT S. ERDAHL,
SHELDON E. BERNSTEIN,
Attorneys.

SEPTEMBER 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946